

BEFORE THE ADMINISTRATIVE HEARING COMMISSION
STATE OF MISSOURI

FILED

JUL 31 2008

ADMINISTRATIVE HEARING
COMMISSION

LINDA BOHRER, Acting Director)
Department of Insurance, Financial)
Institutions & Professional Registration)
State of Missouri,)

Petitioner,)

vs.)

HALLEY E. LAIR,)

Respondent.)

Serve:)

215 South Carr Street)
Galena, MO 65656)
417-357-0064)

Case No.: _____

080728449 C

COMPLAINT

LINDA BOHRER, Acting Director of the Missouri Department of Insurance, Financial Institutions and Professional Registration, through counsel, complains and requests the Administrative Hearing Commission find that cause exists for disciplinary action against Respondent, Halley E. Lair, because:

INFORMATION RELEVANT TO ALL COUNTS

1. Petitioner is the Acting Director of the Department of Insurance, Financial Institutions and Professional Registration. The Director has the duty to administer Chapters 374 and 375, RSMo, which includes the supervision, regulation, and discipline of insurance producers.

2. The Missouri Department of Insurance, Financial Institutions and Professional Registration issued Halley E. Lair an insurance producer license which is currently active and set to expire on July 6, 2009 (License Number PR397164).

3. The Commission has jurisdiction over this Complaint pursuant to § 621.045, RSMo (Supp. 2007).

COUNT I

4. Respondent Lair used fraudulent or dishonest practices, or demonstrated untrustworthiness in the conduct of business in this state, which is grounds for discipline of Lair's insurance producer license pursuant to § 375.141.1(8), RSMo (Supp. 2007).

5. Section 375.141.1(8), RSMo (Supp. 2007) states, in part:

The director may suspend, revoke, refuse to issue or refuse to renew an insurance producer license for any one or more of the following causes:

(8) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere;

6. Fraud is an intentional perversion of truth to induce another to act in reliance upon it. *Hernandez v. State Bd. Of Regis'n for Healing Arts*, 936 S.W.2d 894, 899 n.2 (Mo. App., W.D. 1997). Dishonesty is a lack of integrity, a disposition to defraud or deceive. MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 359 (11th ed. 2004). It includes actions that reflect adversely on trustworthiness. *In re Duncan*, 844 S.W.2d 443, 444 (Mo. banc 1992). Dishonesty is always a component of fraud. *Director of Ins., Fin. Inst. and Prof'l Registration v. Gregory Lee Fetters*, NO. 07-0162 DI, (Mo. Admin. Hrg. Comm'n Dec. 6, 2007). The definition of "trustworthy" is "worthy of confidence" or "dependable." *Stith v. Lakin*, 129 S.W.3d 912, 918 (Mo. App., S.D. 2004).

7. The facts are as follows:

- a. Respondent Lair visited David B. Kenedy's employer's office in December of 2007 to offer insurance to employees. Respondent Lair told Mr. Kenedy that she required Mr. Kenedy's social security number and signature on a document entitled "Premium Deduction Authorization/Waiver of Participation Form" in order to obtain an effective rate quote. Mr. Kenedy provided his social security number and signature to Respondent Lair. Further, Mr. Kenedy told Respondent Lair that he needed to discuss the purchase with his wife before agreeing to any coverage. Later that day, Mr. Kenedy called Respondent Lair and told her that he declined the insurance coverage. Respondent Lair told Mr. Kenedy that she would "take [him] out of the system."
- b. On February 12, 2008, Mr. Kenedy received policy information in the mail that corresponded with the Aflac¹ coverage he declined in December of 2007. Mr. Kenedy contacted the insurance company listed on the policy and spoke with "Dan", an Aflac employee, who advised Mr. Kenedy that Aflac would have a "customer review" done to research Respondent Lair's misrepresentation of the policy. On the same day, Mr. Kenedy filed a complaint against Respondent Lair with the Department.

8. As a result, sufficient grounds exist for disciplining Respondent Lair's insurance producer license pursuant to § 375.141.1(8), RSMo (Supp. 2007).

COUNT II

9. Respondent Lair used fraudulent or dishonest practices, or demonstrated untrustworthiness in the conduct of business in this state, which is grounds for discipline of Lair's insurance producer license pursuant to § 375.141.1(8), RSMo (Supp. 2007).

¹ American Family Life Assurance Company of Columbus (Aflac).

10. The facts are as follows:

- a. On or about February 19, 2008, the Department received a complaint letter dated February 15, 2008, from consumer Rita Gibson, regarding Respondent Lair's sales practices.
- b. In December of 2007, while Respondent Lair was visiting Ms. Gibson's employer's office to discuss a proposed cafeteria plan, Respondent Lair told Ms. Gibson that Ms. Gibson must provide her social security number and signature on the "Premium Deduction Authorization/Waiver of Participation form" in order to get her in the system. Respondent Lair told Ms. Gibson she could always cancel the policy at a later date.
- c. In February of 2008, Ms. Gibson called Aflac to cancel the policy. An Aflac employee told her they could not cancel the policy even though no payments have been made yet and that since it was under a cafeteria plan Ms. Gibson had to pay the premium.
- d. Ms. Gibson claimed Respondent Lair misrepresented herself and Aflac by selling her a policy in this manner.

11. As a result, sufficient grounds exist for disciplining Respondent Lair's insurance producer license pursuant to § 375.141.1(8), RSMo (Supp. 2007).

COUNT III

12. Respondent Lair failed to adequately respond to an inquiry from the Department within twenty (20) days from the date the Department mailed the inquiry, in violation of 20 CSR 100-4.100, which is grounds for disciplining Respondent Lair's insurance producer license pursuant to § 375.141.1(2), RSMo (Supp. 2007).

13. Pursuant to § 374.190, RSMo (2000), the Director has the duty to examine and inquire into all violations of the insurance laws of the state. In exercising this duty, the Director may summon and compel the attendance and production of documents from any person. Section 374.190, RSMo (2000) states, in part:

1. The director shall examine and inquire into all violations of the insurance laws of the state, and inquire into and investigate the business of insurance transacted in this state by any insurance agent, broker, agency or insurance company.

2. He or any of his duly appointed agents may compel the attendance before him, and may examine, under oath, the directors, officers, agents, employees, solicitors, attorneys or any other person, in reference to the condition, affairs, management of the business, or any matters relating thereto. He may administer oaths or affirmations, and shall have power to summon and compel the attendance of witnesses, and to require and compel the production of records, books, papers, contracts or other documents, if necessary.

14. People subject to Department, Director or Division inquiries must respond promptly.

Regulation 20 CSR 100-4.100 states, in part:

Upon receipt of any inquiry from the division, every person shall mail to the division an adequate response to the inquiry within twenty (20) days from the date the division² mails the inquiry. An envelope's postmark shall determine the date of mailing. When the requested response is not produced by the person within twenty (20) days, this nonproduction shall be deemed a violation of this rule, unless the person can demonstrate that there is reasonable justification for that delay.

15. Failure of a person to adequately respond to such an inquiry may result in discipline of the person's insurance license. Section 375.141.1(2), RSMo (Supp. 2007) states, in part:

The director may suspend, revoke, refuse to issue or refuse to renew an insurance producer license for any one or more of the following causes:

(2) Violating any insurance laws, or violating any regulation, subpoena or order of the director or of another insurance commissioner in any other state;

16. The facts are as follows:

² Prior versions of this regulation used "department" instead of "division".

a. On February 15, 2008, the Department mailed an inquiry to Respondent Lair at the address on file with the Department, regarding a consumer complaint filed by Mr. Kenedy. The letter included a copy of Mr. Kenedy's complaint and advised Respondent Lair that a response was required by March 6, 2008. The letter was not returned to the Department as undeliverable.

b. Respondent Lair failed to respond to the Department's inquiry.

17. As a result, sufficient grounds exist for disciplining Respondent Lair's insurance producer license pursuant to § 375.141.1(2), RSMo (Supp. 2007).

COUNT IV

18. Respondent Lair failed to adequately respond to an inquiry from the Department within twenty (20) days from the date the Department mailed the inquiry, in violation of 20 CSR 100-4.100, which is grounds for disciplining her insurance producer license pursuant to § 375.141.1(2), RSMo (Supp. 2007).

19. The facts are as follows:

a. On February 25, 2008, the Department mailed an inquiry to Respondent Lair at the address on file with the Department, regarding a consumer complaint filed by Rita Gibson. The letter included a copy of Ms. Gibson's complaint and advised Respondent Lair that a response was required by March 18, 2008. The letter was not returned to the Department as undeliverable.

b. Respondent Lair failed to respond to the Department's inquiry.

20. As a result, sufficient grounds exist for disciplining Respondent Lair's insurance producer license pursuant to § 375.141.1(2), RSMo (Supp. 2007).

COUNT V

21. Respondent Lair failed to adequately respond to a Subpoena from the Department, grounds for disciplining Respondent Lair's insurance producer license pursuant to §§ 375.141.1(2) and 374.210, RSMo (Supp. 2007).

22. Section 375.141.1(2), RSMo (Supp. 2007) states, in part:

The director may suspend, revoke, refuse to issue or refuse to renew an insurance producer license for any one or more of the following causes:

(2) Violating any insurance laws, or violating any regulation, subpoena or order of the director or of another insurance commissioner in any other state;

23. Section 374.210.2, RSMo (Supp. 2007), states, in part:

If a person does not appear or refuses to testify, file a statement, produce records, or otherwise does not obey a subpoena as required by the director, the director may apply to the circuit court of any county of the state or any city not within a county, or a court of another state to enforce compliance. . . . The director may also suspend, revoke or refuse any license or certificate of authority issued by the director to any person who does not appear or refuses to testify, file a statement, produce records, or does not obey a subpoena.

24. The facts are as follows:

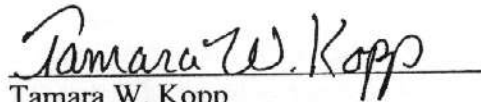
- a. On April 10, 2008, the Department issued a Subpoena requesting Respondent Lair's appearance and the production of documents on May 7, 2008. The Subpoena related to consumer complaints filed by Mr. Kenedy and Ms. Gibson. The Subpoena was served by certified mail to the address on file with the Department.
- b. On or about May 1, 2008, the Department received the certified mail "green card" which included a completed signature upon delivery line and a May 01, 2008 date stamp.

- c. Respondent Lair failed to appear before the Department or produce documents on May 7, 2008, as required by the Subpoena.
- d. Department Investigator Dennis Fitzpatrick misread the date stamp on the "green card" as May 10, 2008. Investigator Fitzpatrick mistakenly believed that Respondent Lair may not have received the Subpoena in a timely manner, and gave Respondent Lair an additional opportunity to comply with the Subpoena.
- e. On May 14, 2008, the Department sent a letter to Respondent Lair via U.S. Mail rescheduling the appearance date for June 18, 2008. The letter was not returned to the Department as undeliverable.
- f. Respondent Lair failed to appear before the Department or produce documents on June 18, 2008, as required in the May 14, 2008 letter.

25. As a result, sufficient grounds exist for disciplining Respondent Lair's insurance producer license pursuant to §§ 375.141.1(2) and 374.210, RSMo (Supp. 2007).

WHEREFORE, based on the foregoing, Petitioner respectfully requests that the Commission make findings of fact and conclusions of law stating that Petitioner has established cause to discipline Respondent Halley E. Lair's insurance producer license pursuant to §§ 375.141.1(8), 375.141.1(2), and 374.210, RSMo (Supp. 2007).

Respectfully submitted,



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